

REMARKS:

Claims 1-20 are pending. By this Amendment, Figs. 1-3 are amended, claim 12 is amended, claims 1-11 are cancelled, and claims 21-31 are added, thereby leaving claims 13-20 unchanged.

Drawing Objections

The drawings stand objected to as failing to comply with 37 C.F.R. §1.83(a) because they do not show every feature of the invention specified in the claims. Particularly, the Examiner indicates that the subject matter of claims 3, 9, 10, 13, and 14 are not shown in the drawings. Claims 3, 9, and 10 are currently cancelled without prejudice, thereby rendering the objections thereto moot. Applicant respectfully submits that the cancellation of claims 3, 9, and 10 does not imply that the subject matter thereof is not shown in the drawings. Instead, claims 3, 9, and 10 have merely been cancelled to further prosecution of this patent application.

With regards to claims 13 and 14, Applicant submits that the attached replacement drawing sheets of Figs. 1-3 show the subject matter of claims 13 and 14. Since the subject matter of claims 13 and 14 is part of the original disclosure of this patent application via the claims and the specification, Applicant is entitled to bring the drawings into conformity with the claims and specification. Figs. 1-3 are hereby amended to include the originally disclosed subject matter of claims 13 and 14 and to conform Figs. 1-3 to the claims and the specification. No new matter is added. Entry of the replacement drawings is respectfully requested.

Claim Objections

Claims 4 and 6 stand objected to as including the trademark Tyvek. Applicant hereby cancels claims 4 and 6, thereby rendering these objections moot.

Claim Rejections

Claims 1, 2, and 5 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,586,339 ("Lathan").

Claims 4, 6-12, and 15-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lathan alone.

Claim 3 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Lathan in view of U.S. Patent No. 6,405,377 ("Davis").

Claims 13 and 14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lathan in view of U.S. Patent No. 5,774,892 ("Tisdale et al.").

Claims 1-11 are hereby cancelled, thereby rendering the rejections thereof moot.

Currently amended independent claim 12 recites:

Disposable outerwear for use by a participant of an athletic or sporting event comprising:
a jacket having an upper body portion with a head opening and an elastic waist opening, and sleeves with elastic hand openings;
pants having a groin portion with an elastic waist opening, and legs with elastic feet openings;
at least one closure device disposed on the jacket or pants; and
a plurality of perforations disposed on the jacket and pants;
wherein the jacket and pants are made of a material that is lightweight, strong, vapor-permeable, water resistant, puncture resistant, tear resistant, and abrasion resistant.

Tyvek is described in the original disclosure of the present application and is a material made by DuPont. Tyvek is known in the art to be lightweight, strong, vapor resistant, puncture resistant, tear resistant, and abrasion resistant. A print-out from www.tyvek.com is submitted herewith illustrating this point. Accordingly, the amended subject matter of independent claim 12 is not new matter and, instead, is supported by the original disclosure of the present application.

Lathan discloses an outer protective garment apparatus for protecting a user's cloths. In Figs. 1 and 2 the apparatus includes a torso assembly 12 and a pants assembly 22. In Figs. 5 and 6 the apparatus includes a unified integrated jumpsuit structure 32. A rip cord 54 is included in the embodiment of the apparatus shown in Figs. 5 and 6 to permit removal of the apparatus.

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of presenting a *prima facie* case of obviousness based upon the prior art. *In re Fritch*, 972 F.2d 1260, 1265, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992); *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). One of the three prongs required to establish a *prima facie* case of obviousness is that the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *In re Royka*, 490 F.2d 981, 985, 180 U.S.P.Q. 580, 583 (CCPA 1974); MPEP §§ 706.02(j), 2143.03.

On page 5, first paragraph of the June 16, 2006 Office Action, the Examiner admits that Lathan does not disclose Tyvek and, accordingly, does not disclose a material that is lightweight, strong, vapor-permeable, water resistant, puncture resistant, tear resistant, and abrasion resistant. Applicant agrees that Lathan does not disclose Tyvek and, in relation to claim 12, does not teach or suggest, among other things, a jacket and pants made of a material that is lightweight, strong, vapor-permeable, water resistant, puncture resistant, tear resistant, and abrasion resistant. Accordingly, the Examiner fails to establish a *prima facie* case of obviousness.

The Examiner attempts to cure the deficiencies of Lathan by indicating that Lathan discloses polyethylene and contends that it would be obvious to one of ordinary skill in the art to use polyethylene in place of Tyvek. Applicant respectfully disagrees with this contention. Polyethylene comes in a large variety of forms, each having different compositions, properties, and functions. Simply referring to polyethylene would not lead one of ordinary skill in the art to the material claimed in independent claim 12. More information than that disclosed in Lathan would have to be provided to one of ordinary skill in the art in order to arrive at the material claimed in independent claim 12. Nowhere in Lathan is a material taught or suggested that is lightweight, strong, vapor-permeable, water resistant, puncture resistant, tear resistant, and abrasion resistant disclosed and such material would not be obvious in view of the disclosure of Lathan. Deficiencies of references cannot be saved by appeals to “common sense” and “basic knowledge” without any evidentiary support. In re Zurko, 258 F.3d 1379 (Fed. Cir. 2001).

For these and other reasons, Lathan does not teach or suggest the subject matter of independent claim 12. Accordingly, independent claim 12 is allowable. Claims 13-15 and 21 depend from independent claim 12 and are allowable for the same and other reasons as independent claim 12.

Independent claim 16 recites:

A method for using disposable outerwear in a sports or athletic endurance event having a defined route comprising the steps of:
distributing the outerwear to a plurality of activity participants;
providing a plurality of containers along the event route for retaining the outerwear and/or parts thereof as it is discarded by the participants;
collecting the discarded outerwear and/or parts thereof; and
recycling the discarded outerwear and/or parts thereof.

Lathan discloses an outer protective garment apparatus for protecting a user's cloths. Lathan does not disclose a single method of using the outer protective garment and, particularly, does not disclose the method recited in independent claim 16.

Accordingly, Lathan does not teach or suggest a method for using disposable outerwear in a sports or athletic endurance event as claimed in claim 16. The Examiner contends that it would be obvious to one of ordinary skill in the art to use the outer wear as claimed. However, in proceedings before the Patent and Trademark Office, the Examiner bears the burden of presenting a *prima facie* case of obviousness based upon the prior art. In re Fritch, 972 F.2d 1260, 1265, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992); In re Fine, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). One of the three prongs required to establish a *prima facie* case of obviousness is that the prior art reference (or references when combined) must teach or suggest all of the claim limitations. In re Royka, 490 F.2d 981, 985, 180 U.S.P.Q. 580, 583 (CCPA 1974); MPEP §§ 706.02(j), 2143.03. The Examiner concedes on page 5, second paragraph, that Lathan does not state the method for using the outerwear. This clearly establishes that Lathan does teach or suggest the subject matter of claims 16-20. The Examiner attempts to satisfy the lack of such teaching by stating that such a method is obvious. This contention of obviousness is made without any teaching or suggestion of the claimed method within Lathan. Deficiencies of references cannot be saved by appeals to "common sense" and "basic knowledge" without any evidentiary support. In re Zurko, 258 F.3d 1379 (Fed. Cir. 2001). Accordingly, stating that a method is obvious without providing any evidentiary support (such as a teaching or suggestion within Lathan) is clearly improper. In addition, it is difficult to understand how a method would be obvious when not a single step of the method is disclosed in Lathan. Withdrawal of the rejection of claims 16-20 is respectfully requested.

For these and other reasons, Lathan does not teach or suggest the subject matter of independent claim 16. Accordingly, independent claim 16 is allowable. Claims 17-20 depend from independent claim 16 and are allowable for the same and other reasons as independent claim 16.

New dependent claims 21 and 23 recite that the outerwear is made of a material including fine, continuous fibers of 100% high-density polyethylene that are randomly distributed and nondirectional. Tyvek is described in the original disclosure of the present patent application

and is a material made by DuPont. Tyvek is known in the art to have fine and continuous fibers of 100% high density polyethylene that are randomly distributed and nondirectional. A print-out from www.tyvek.com is submitted herewith illustrating this point. Accordingly, the subject matter of dependent claims 21 and 23 is not new matter and, instead, is supported by the original disclosure of the present application.

On page 5, first paragraph, the Examiner admits that Lathan does not disclose Tyvek and, accordingly, does not disclose a material including fine, continuous fibers of 100% high-density polyethylene that are randomly distributed and nondirectional. Applicant agrees that Lathan does not disclose Tyvek and, in relation to claims 21 and 23, does not teach or suggest, among other things, outerwear made of a material including fine, continuous fibers of 100% high-density polyethylene that are randomly distributed and nondirectional.

The Examiner attempts to cure the deficiencies of Lathan by indicating that Lathan discloses polyethylene and contends that it would be obvious to one of ordinary skill in the art to use polyethylene in place of Tyvek. Applicant respectfully disagrees with this contention. Polyethylene comes in a large variety of forms each having different compositions, properties, and functions. Simply referring to polyethylene would not lead one of ordinary skill in the art to the material claimed in claims 21 and 23. More information than that disclosed in Lathan would have to be provided to one of ordinary skill in the art in order to arrive at the material claimed in claims 21 and 23. Nowhere in Lathan is a material taught or suggested that includes fine, continuous fibers of 100% high-density polyethylene that are randomly distributed and nondirectional and such material would not be obvious in view of the disclosure of Lathan. Deficiencies of references cannot be saved by appeals to "common sense" and "basic knowledge" without any evidentiary support. *In re Zurko*, 258 F.3d 1379 (Fed. Cir. 2001).

For these and other reasons, Lathan does not teach or suggest the subject matter of dependent claims 21 and 23. Accordingly, dependent claims 21 and 23 are allowable.

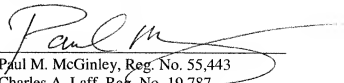
CONCLUSION:

In view of the foregoing, entry of the present Amendment and allowance of claims 12-31 are respectfully requested.

The undersigned is available for telephone consultation during normal business hours.

Respectfully submitted,

Date: December 15, 2006



Paul M. McGinley, Reg. No. 55,443

Charles A. Laff, Reg. No. 19,787

Michael Best & Friedrich LLP

Two Prudential Plaza

180 North Stetson Avenue, Suite 2000

Chicago, IL 60601

(312) 222-0800

Docket No. 205236-9007

TYVEK®

DuPont Tyvek® has introduced new dimensions of protection, security and safety in a wide variety of industries, including protective apparel, construction, envelopes, medical packaging and graphics.

Made from very fine, high-density polyethylene fibers, Tyvek® brand protective material offers all the best characteristics of paper, film and fabric in one material. This unique balance of properties, which cannot be found in any other material, makes Tyvek® lightweight yet strong; vapor-permeable, yet water-, chemical-, puncture-, tear- and abrasion-resistant. Tyvek® is also low-linting, smooth and opaque.

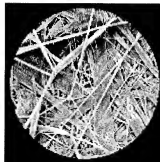
**A miracle of science from DuPont**

The discovery of Tyvek® was a chance occurrence by a DuPont researcher, Jim White, who in 1955 noticed white polyethylene fluff coming out of a pipe in a DuPont experimental lab. A program to develop the new material was set up, and a year later DuPont submitted a patent proposal for strong yarn linear polyethylene.

The proprietary flash-spinning technology, which is the basis for what was to become DuPont's new engineered sheet structure, took several more years to perfect. In 1959, a pilot facility was established for trial applications such as book covers, tags, labels and certain garments. In 1965, the new engineered sheet structure was registered under the trademark name Tyvek®, but it was not until April 1967 that commercial production of Tyvek® started.

FLASH-SPINNING AND BONDING PROCESS

Tyvek® is formed by a fully integrated process using continuous and very fine fibers of 100 percent high-density polyethylene that are randomly distributed and nondirectional. These fibers are first flash spun, then laid as a web on a moving bed before being bonded together by heat and pressure - without the use of binders, sizors or fillers. By varying both the lay-down speed and the bonding conditions, DuPont technicians can engineer the flashspun sheet to meet market needs, such as soft- and hard-structure Tyvek®.

**Tyvek® Soft and Hard Structure**

Tyvek® soft structure is designed specifically for those textile applications where drape, hand and soft feel are of prime importance, such as limited-use protective garments.

Tyvek® hard structure can supplant traditional paper by offering superior tear resistance and lighter weight. It is ideal for envelopes and graphics applications.

A variety of finishing techniques, including embossing, corona treatment (to improve adhesion of printing inks and coatings), anti-static treatment and softening for drapability, allow the product to be fine-tuned to the specific needs of end-users.

MAJOR MARKETS**Construction**

One of the most popular and widely known applications of Tyvek® is



in the construction industry, where it is used to increase air and water resistance, helping to lower heating and cooling costs in buildings and providing better protection against water and moisture intrusion. The unique qualities of Tyvek® help stop air flow through wall cavities; help hold out bulk water and wind-driven rain; and allow moisture vapor to escape from inside walls. The result is a more comfortable, energy-efficient building with far fewer chances for damage from degradation effects.

Protective Apparel



Today, limited-use protective garments and work-wear are among the most important commercial applications to benefit from the unique combination of properties offered by Tyvek®. Garments made of Tyvek® are either used for hazardous environments or for general, non-hazardous, industrial use. Examples of uses for hazardous environments include protection against water-based acids, bases, salts and splashes of certain liquids, such as pesticides and herbicides. The garments also provide a reliable barrier against exposure to harmful dry particles, such as lead dust, asbestos and particles contaminated with radiation. Non-hazardous, industrial uses include wearing the garments for "dirty jobs" at factories, workshops, engineering plants, farms and construction sites.

Envelopes

The unique composition of Tyvek® results in virtually the strongest envelope available – offering superior protection from punctures, tears and moisture. Remarkably light, Tyvek® envelopes can help to save on mailing costs. Tyvek® envelopes are also kind to the environment. Made with 25 percent post-consumer recycled (PCR) content, they're also recyclable. And, for protecting a multitude of valuable contents, Tyvek® envelopes come in a variety of styles and sizes, custom imprintable with any attention-grabbing design.



For more than 25 years, Federal Express has been taking advantage of the properties of Tyvek® for the FedEx® Pak, and in 1983, the U.S. Postal Service also began using Tyvek® as the material of choice for large expedited mail envelopes.

Medical Packaging



An industry standard for more than 30 years, Tyvek® is used in virtually every form of sterile medical packaging. That's because Tyvek® delivers an optimum balance of bacteria penetration resistance, tear strength, puncture resistance and clean peel, as well as compatibility with existing and emerging sterilization methods.

Graphics

The use of Tyvek® in graphics-related applications has seen rapid growth in recent years, and there is much potential for continued growth. Among the first graphic products manufactured from hard-structure Tyvek® were outdoor advertising posters and banners; labels; tags; and schoolbook covers – applications that benefit from its water, abrasion and tear resistance. Today, many more graphics uses have been found for Tyvek®, such as highly durable maps and guidebooks; chemical container labels; workshop manuals; race numbers for marathon runners; and frozen food labels. In addition to its durability, Tyvek® can be slit, scored, die-cut, laminated, embossed, grommetted and sewn, making it extremely versatile.



Covers

Because Tyvek® is water resistant, yet breathable, it is ideal for car, boat and camper covers. The unique nonwoven structure of Tyvek® protects against acid rain and salt spray by holding out more water than cotton, polyester or cotton/polyester covers; however,



because it is breathable, it also allows trapped moisture to escape, helping to prevent rot and mildew. What's more, because Tyvek® does not absorb water, it is significantly lighter than other covers -- even when wet. Tyvek® is a proven shield from the sun, blocking 98 percent of the sun's damaging

ultraviolet (UV) rays, and it is specially engineered to keep out abrasive dirt and dust, so finishes are less likely to become dull or stained.

ABOUT DUPONT TYVEK®

Production facilities are located in Richmond, Va., and, in Luxembourg. The protective qualities of DuPont Tyvek® help ensure peak performance in a variety of industries ranging from protective apparel, construction and envelopes to medical packaging, covers and graphics.



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